

**PLANNING COMMISSION MINUTES OF 04/25/05**

**2005-0190 – NeoConix Inc.** [Applicant] **SCP-I** [Owner]: Application for a Use Permit on a 28,459 square-foot site to allow a covered equipment area for a total floor area ratio (FAR) of 43% where 35% FAR may be allowed without City Council review. The property is located at **715 North Pastoria Avenue** (near Almanor Ave and Del Rey Ave) in an M-S (Industrial & Service) Zoning District. (Mitigated Negative Declaration) (APN: 165-41-025) JM

**Jamie McLeod**, Associate Planner, presented the staff report. This application is for a Use Permit for a property located at 715 N. Pastoria Avenue. The applicant wants to move an existing indoor waste removal process to an outside covered area to make room for a new process inside the building and to provide a safer workspace for employees. Since the proposed addition is for chemical storage use only, the transportation impact fee and the housing mitigation impact fees do not apply and staff requests that the Recommended Condition of Approval (COA), 1.E. be removed. The applicant requested and received a building permit to begin work on the pad only. One of the primary issues for this site is the mitigation to contain the spill of chemicals. The applicant has suggested a berm be located around the storage site. The City's Hazardous Materials Coordinator has reviewed and verified that this proposal meets the safety requirements. Staff distributed a replacement for page 4 of Attachment C, the Mitigated Negative Declaration, referring to item 9., revising the description of uses to be Office and R&D space, not residential. Another issue for the site is that the total landscaping is insufficient. There is sufficient parking on the site and staff recommends the replacement of some of the parking spaces with landscaping which will help with parking lot shading. Staff recommends the Planning Commission recommend approval of the application to the City Council with modifications to the Mitigated Negative Declaration as submitted, conversion of some of the parking to landscaping, the addition of bicycle parking and the removal of COA 1.E. as earlier suggested. There is one pending issue of the underground utility drop as the applicant is suggesting that the utility area is actually on the neighboring property.

**Comm. Klein** commented that he was surprised that the Mitigated Negative Declaration, page 10 shows no noise impact information as the report indicates there will be equipment (air compressor, chiller, generator) running outside in a fenced area that would seem to have some noise impacts. Staff responded that the site would be required to meet the City noise ordinance which is measured at the property line (not to exceed 70 decibels for an industrial area).

**Chair Moylan** stated that on his site visit he was surprised to see work underway and asked for further clarification from staff. Ms. McLeod said that a building permit was issued for just the concrete platform (without equipment) as the site has adequate parking to issue that permit at the staff level. This application

being discussed is for the moving and storing of the equipment outside on an enclosed and covered area. Chair Moylan also questioned that the Mitigated Negative Declaration indicates no environmental impacts on the water and air quality. It is hard for him to believe how this relocation of equipment could have zero impact on the environment. Ms. McLeod replied that the applicant said there would be no gases involved and therefore no impact on the air quality. The potential for a hazardous spill (water quality) is captured under the Biological Resources and Hazards and Hazardous Materials section of the Mitigated Negative Declaration. Trudi Ryan added that the wording and thus the checklist answers on the Mitigated Negative Declaration are very specific. Chair Moylan asked staff about the acids and bases mentioned in the report commenting that if you have a liquid acid spill even with the berm, there could still be fumes. Trudi Ryan added that the planning staff relies on the Hazardous Materials Coordinator's judgment and he is available if more information is needed.

**Comm. Simons** questioned staff about the general process of whether the Planning Commission should or could modify a Mitigated Negative Declaration if there was disagreement with the checklist. Trudi Ryan responded that if the Planning Commission feels a determination is incorrect and wants to make a modification as part of the Public Hearing, a minor change might be made but more significant changes would require a reposting of the Mitigated Negative Declaration for the public before the issue could be addressed again. The general process would be for the Commission to discuss with staff the concern and a determination would be made if it would be appropriate to modify the checklist. Comm. Simons referenced a past example where a requirement for testing was put in as a COA rather than change the Mitigated Negative Declaration. Ms. Ryan commented that if a modification results in a significant change it is possible to postpone an item for additional information and then determine if a new Mitigated Negative Declaration would need to be prepared based on the new information.

#### **Chair Moylan opened the public hearing.**

**Mike Graves**, Director of Manufacturing of the NeoConix Inc. facility, represented the applicant. He clarified that the section in the report about the employees inside the building being exposed to hazardous area surprised him. He clarified that they have been monitored by the Hazardous Material and the Water Pollution Control staff as they do generate wastewater in the facility and at no time are the employees based in a hazardous area. To address the noise impact question he said there used to be a pad for the air conditioning units that the landlord pulled out. What is proposed is a backup generator for air ventilation in case of power outages. The air compressor does make noise but it should be in compliance with the ordinance requirements. He said that this area is basically a waste treatment area for processes in the building. There are already a couple of similar existing projects that are located outside the building by nearby

businesses. He said there will be sulfuric acid (strong acid) and caustics present and a few other polymers, but they will be diluted for pH adjustment only.

**Chair Moylan** asked Mr. Graves what he meant by “caustic”. He responded sodium hydroxide at about 10 to 20% which is a strong base.

**Comm. Hungerford** asked if there would be any kind of security. Mr. Graves responded that there will be a locked slotted fence with a roof to discourage entry.

**Comm. Klein** asked about the current venting situation. Mr. Graves said that currently there are several processes (etching, etc.) being done in the building that are being vented out and to upgrade they are being required to have a backup generator.

**Chair Moylan** asked the applicant for clarification about a reference on page 4 of the report that states the purpose of the relocation of the treatment system is to allow more manufacturing space in the existing building and to create a safer work environment. Mr. Graves replied that the modification is primarily to increase working space in the building. Chair Moylan asked why they wouldn't just want to expand the building instead of building this space outside. Mr. Graves said mostly it is an issue of expense.

**Trudi Ryan** added if this facility were not being roofed it would not require approval of the Planning Commission. The applicant commented that there are other existing facilities similar to this application in Sunnyvale that are non-roofed facilities. The applicant prefers to roof their equipment to protect it from rain water.

**Comm. Simons** confirmed with the applicant whether he was comfortable with the COA 11.A. that states this area is to be used solely for the proposed use of a chemical treatment facility and for no other purposes. Mr. Graves said he was comfortable with the condition.

**Chair Moylan closed the public hearing.**

**Comm. Simons made a motion to recommend to the City Council to adopt the Mitigated Negative Declaration and approve the Use Permit with attached conditions and modifications suggested by staff, modified Attachment C and the removal of Condition 1.E. Comm. Sulser seconded.**

**Comm. Simons** said his major concern was that he did not want to approve a use that could ultimately be expanded but COA 11.A. restricts the use solely to the proposed use so he will be supporting it.

**Comm. Klein** offered a friendly amendment to add a COA 2.E. requiring that the noise levels of the running equipment be measured at the property line after six months or one year. Trudi Ryan said as a general comment that it is difficult for staff to have follow-up dates scheduled for these items, but it is possible. After some discussion **the Friendly Amendment was changed to instead have the noise level measurements be done as part of the finalizing of the building permits. This was accepted by the maker and the seconder of the motion.**

**Comm. Hungerford** offered a friendly amendment to add to COA 3.B. that the area be secured and locked so people do not have access to the enclosed chemicals. This was accepted by the maker and the seconder of motion.

**Chair Moylan** commented that he was uncomfortable with the Mitigated Negative Declaration and will not be supporting the motion. As the application stands he cannot make the two findings as he has concerns regarding the chemicals possibly getting outside the partially enclosed area. If it were fully enclosed he wouldn't have the same concerns.

**Comm. Simons** commented that he can still support this motion.

**Final Motion:**

**Comm. Simons made a motion on Item 2005-0190 to recommend to adopt the Mitigated Negative Declaration with an amendment clarifying the surrounding land uses (Attachment C, Page 4 of 22), and approve the Use Permit with attached conditions with modifications: remove condition 1.E.; add condition 2.E. to test noise at the property line with all equipment running, prior to finalizing the building permit; and modifying 3.B. to include "locked or secured" enclosure area. Comm. Sulser seconded.**

**Motion carried 6-1, Chair Moylan dissenting.**

**Item not appealable. To be considered by City Council in May 2005 and will be noticed when date is set.**

**Chair Moylan** also requested a potential Study Issue regarding the City's definition of storage and how it is fairly easy to meet the permit requirements when some "storage" items should have different levels of security for the protection of nearby neighbors.